**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 806/1997

**THE ORIENTAL INSURANCE COMPANY LTD.
v
SMT. CHARU AGRAWAL & OTHERS**

DATE OF JUDGMENT: FEBRUARY 28, 2007.

Hon'ble Mr. Justice R. S. Chauhan

**Mr. Virendra Agrawal for the appellant.
Mr. R.S. Agrawal for the respondents.**

By Court:

The Oriental Insurance Company has challenged the award dated 11.6.97 passed by the Motor Accident Claims Tribunal, Dausa (henceforth to be referred to as 'the Tribunal' for short) whereby the learned Tribunal has granted a compensation of Rs. 6,92,000/- and has held the Insurance Company liable to pay the said compensation alongwith the National Insurance Company, the respondent No.9 before this Court.

The brief facts of the case are that in the night of 17.10.93 Mr. Anoop Agrawal, alongwith his family members, was travelling in his Maruti car, bearing Registration No. UP-78/G-8210 from Agra to Jaipur. Near Sikandara, a truck, bearing Registration No. RJ-05-G-0038, was parked in the middle of the road. There was no indication from the truck that the said truck is parked in middle of

the road. Therefore, the driver of the Maruti car, Mr. Prem Sagar did not realise that there is a parked truck in the middle of the road. Consequently, the Maruti car, met with an accident with the stationary truck. As a result of the said accident Mr. Anoop Agrawal, the owner of the car died while his other family members suffered injuries. The driver of the car, Mr. Prem Sagar also expired. Since the respondent No. 1 to 6 were financially dependant on Mr. Anoop Agrawal, they filed a claim petition against the owner and the driver of the truck and against the two Insurance Companies, the appellant – Insurance Company which had insured the car and the National Insurance Company, which had insured the truck, before the learned Tribunal.

The appellant-Insurance Company filed its written statement and denied its liability ostensibly on the ground that the owner of the car which was insured by them had died. Therefore, the owner of the car does not come within the definition of the word "third party". Hence, they are not liable for paying the compensation. On the basis of the pleadings of the parties, the learned Tribunal framed five issues. Issue No. 3 was framed with regard to the liability of the appellant-Insurance Company for paying the compensation for the death of Anoop Agrawal. In order to support their case, respondent Nos. 1 to 6 examined nine witnesses and submitted 465 documents. After going through the oral and documentary evidence,

the learned Tribunal held firstly that accident occurred because of the contributory negligence of the driver of the Maruti car. Secondly, that the appellant-Insurance Company is liable to pay 50% of the compensation amount to the respondent Nos. 1 to 6. Thirdly, that the respondent No.1 to 6 fall within the definition of word "any person" contained in Section 147 (b)(ii) of the Motor Vehicles Act, 1988 (henceforth to be referred to as 'the Act', for short). Therefore, the appellant-Insurance Company is liable to pay the compensation to the respondents Nos. 1 to 6. Fourthly, that since the accident had occurred due to contributory negligence of the driver of the Maruti car, the appellant-Insurance Company is liable to pay only 50% of the compensation amount. The learned Tribunal granted a compensation of Rs. 6,92,000/-. But as stated above, the appellant-Insurance Company was directed to pay only 50% of the said amount. Since the appellant-Insurance Company is aggrieved by the said award. Hence this appeal before this Court.

Mr. Virendra Agrawal, learned counsel for the appellant has raised two contentions before this court. Firstly, according to the witnesses and according to the findings of the learned Tribunal, the negligence was that of the car driver and not of the owner of the car. Therefore, the negligence was that of Mr. Prem Sagar and not of Mr. Anoop Agrawal. As far as Mr. Anoop Agrawal and his family members were concerned, it was a case of composite accident and

not of contributory negligence. In fact according to the learned counsel, while deciding the claim petition of the dependants of Mr. Prem Sagar, the learned Tribunal had directed that they are entitled to only 50% of the compensation amount as qua the driver, it was clearly a case of contributory negligence. Therefore, according to the learned counsel in case of the respondents Nos. 1 to 6 it was a case of composite accident and the entire liability for payment of the compensation award rests on the shoulder of the National Insurance Company, the respondent No.9. Secondly, the car was insured in the name of Mr. Anoop Agrawal, the owner, therefore under Section 147 of the Act he falls neither within the term "third party", nor within the term "any person". Moreover, it is not the life of Mr. Anoop Agrawal, which was insured by the Insurance Company. Therefore, the appellant-Insurance Company is not liable for the payment of the compensation amount. He has further argued that the learned Tribunal had wrongly relied upon the case of the Divisional Manager, Oriental Insurance Co. Ltd. Vs. Jasoda Mohanta & Ors. (AIR 1996 Orissa 120). In order to buttress his contention, the learned counsel has relied on the case of Dhanraj Vs. New India Assurance Co. Ltd. & Anr. (2004 (2) WLC (SC) 783). He has also relied on the case of Oriental Insurance Co. Ltd. Vs. Smt. Jhuma Saha & Ors. (Civil Appeal No. 280 of 2007 (Arising out of SLP © No. 4753/2004 decided on 16.1.07)).

Mr. R.S. Agrawal, learned counsel for respondent No.9, on the other hand, has argued that the liability of 100% of the compensation amount cannot be imposed upon respondent No.9. For, the respondent No.1 to 6 could have arrayed, the legal representatives of the car driver, Mr. Prem Sagar as parties to the claim petition filed by them, since the accident was a result of his contributory negligence. Therefore, they are also liable to pay 50% of the compensation amount to the respondent Nos. 1 to 6.

We have heard both the learned counsels and have perused the impugned award and have considered the judgments cited at the Bar.

This case raises the issue about the liability of the Insurance Company in case the owner of the vehicle expires in an accident. This issue is no longer res indegra as the same has been decided by the Hon'ble Supreme Court in the case of Dhanraj (supra). While analysing Section 147 of the Act, the Apex Court held that "Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily

injury to the owner of the vehicle."

This is more abundantly clear from the language of Section 147 itself. Section 147 of the Act is as under:-

> **"147. Requirements of policies and limits of liability. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which**
> **(a) is issued by a person who is an authorized insurer; or**
> **(b) insurer the person or classes of persons specified in the policy to the extent specified in sub-section (2)**
> **(i)against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;**
> **(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place :**
> **Provided that a policy shall not be required**
> **(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of or bodily injury to, any such employee**
> **(a) engaged in driving the vehicle, or**
> **(b) it it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or**
> **(c) it it is a goods carriage, being carried in the vehicle, or**
> **(ii) to cover any contractual liability.**
> **Explanation-For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out**

of the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.
(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:-
(a) save as provided in clause (b), the amount of liability incurred;
(b) in respect of damage to any property of a third party, a limit of rupees six thousand:
Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier."

A bare perusal of Section 147(b)(i) clearly states "against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place". It is imperative to note that the liability will arise in respect of the death or bodily injury to any person. Therefore, the owner of the vehicle, who dies, cannot be included in the term 'in respect of death or bodily injury to any person". Obviously the term "any person" would have to be different from "the owner". Moreover, he cannot be included as a "third party" as the contract is between the insurer company and the insured, who are the first and second party. Therefore, under the provisions of

Section 147, the Insurance Company would not be liable to pay any compensation for any bodily injury to or death of the owner of the vehicle. Therefore, the learned Tribunal has erred in holding that in the case of death of Mr. Anoop Agrawal, the owner or the car is insured, the appellant-Insurance Company in the case, is liable to pay the compensation to the respondent Nos. 1 to 6 for the death of Mr. Anoop Agrawal.

As far as Mr. Anoop Agrawal is concerned, the accident was not caused because of his contributory negligence. Since the learned Tribunal has concluded that the negligence was that of the car driver, it cannot be held that Mr. Anoop Agrawal had contributed to the negligence which caused the accident. Therefore, as far as he is concerned, it is a case of composite accident. Therefore, the learned Tribunal could not have bifurcated the payment of the compensation into two equal parts - 50% to be paid by the appellant-Insurance Company and 50% to be paid by the Insurance Company of the truck. Since it is a case of composite accident, the liability for the payment of the compensation squarely rests on the shoulder of respondent No.9, The National Insurance Co. Ltd., the Insurance Company of the truck.

In the light of the above discussion, we modify the impugned award dated 11.6.97 to the limited extend that the

respondent No. 1 to 6 shall be paid the total amount of compensation of Rs. 6,92,000/- by the respondent No.9, the National Insurance Co. Ltd. Since this court is informed that the National Insurance Company has already paid the 50% of the compensation amount, as directed by the learned Tribunal to the respondents Nos. 1 to 6, the remaining 50% of the compensation award shall be paid forthwith and not later than two months from the date of the receipt of the certified copy of this judgment. The rest of the award qua the other claimants shall not be disturbed. The learned Tribunal is directed to recover the 50% of the compensation amount from respondent No.9 within a period of two months and to handover the said amount to the respondents Nos. 1 to 6 within the said period. The appeal is according allowed as indicated above.

(R.S. CHAUHAN) J.

MRG.